

No. 17752. ✓

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

EDWARD DUGLASS O'BRIEN

Appellant,

vs.

FRANK STRATTA, et al.,

Appellees.

Appeal From the United States District Court for the
Southern District of California, Central Division.

BRIEF OF THE PLAINTIFF-APPELLANT.

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Appeal From the United States District Court for the
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BRIEF OF THE PLAINTIFF-APPELLANT.

I.

Jurisdictional Statement.

The District Court had original jurisdiction, Title 28, United States Code, Section 1338(a), this cause arising under the copyright laws of the United States, Title 17, United States Code, Act of July 30, 1947, 61 Stat. 652, as amended, and the Universal Copyright Convention, as stated in Paragraph I of the Complaint [Tr. of Rec. p. 242] and Title 28, United States Code, Section 1338(a) being:

“The District Courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to . . . copyrights . . . Such jurisdiction shall be exclusive of the courts of the States in . . . copyright cases.”

The United States Court of Appeals for the Ninth Circuit has jurisdiction as stated in the provision that orders, judgments or decrees arising under the copyright laws may be reviewed on appeal or writ of error, Title 17, United States Code, the Copyright Code, Section 114:

“Review of Orders, Judgments or Decrees.—The orders, judgments or decrees of any court mentioned in section 1338 of Title 28 arising under the copyright laws of the United States may be reviewed on appeal in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.”¹

II.

Summary of the Pleadings.

On Appeal by timely Notice of Appeal filed on the day of denial, August 8, 1961, from an Order of Dismissal entered July 14, 1961 of the Complaint filed May 26, 1961 and Motion to Re-consider refused hearing August 8, 1961, *Edward Dunbar O'Brien v. Frank Sinatra, et al.*, is an action for infringement of copyright and unfair competition which charges 35 combinations and re-combinations of defendants in acts of aggression against copyright properties of the Plaintiff-Appellant arising from that transaction which was the Plaintiff-Appellant's disclosure of his original works and in honorable and legitimate business practice submitting such works to the perusal of those whose pro-

¹And Rules 72-76 of the Federal Rules of Civil Procedure; Title 28, United States Code, Section 126; *Victor Talking Machine Co. v. George*, 42 USPQ 346 (CCA 3, 1939); *United States v. Carver*, 260 U. S. 490 (1923).

fession and position is that of processing, publishing, producing, performing such works.

Plaintiff is caused to complain that no single honorable or legitimate business practice was found in response from the defendants named. Rather, the copying thereof and retention of manuscripts and printed properties, inclusive of illustrative manuscript proffered by plaintiff substantiating "settlement" solicited from him by defendants.

Defendants confederated and conspired to deprive Plaintiff-Appellant of all opportunity with original work created and owned by him, and wrongfully misappropriated for their commercial advantage benefits and belongings of the Plaintiff-Appellant, prejudicing the sales and superseding the objects of the original works by plagiarism, the criminal offense of willful infringement for profit in felonious conspiracy to damage and deprive, cause loss of sales and prestige to Plaintiff-Appellant and to deceive the general public. (Plaintiff has previously subsumed the cause by citing before this Court of Appeals that the properties involved are a "library," "The Library Of A Lifetime,"—Edward Dunbar O'Brien, and that the "library has been looted.")

The above statement of the case is based-upon and compiled-from Title 17, U. S. C., Section 104, and the Copyright Decisions in

Karll v. Curtis Publishing Company (D. C. Wis.), 39 Fed. Supp. 806;

New York Tribune v. Otis & Company (D. C. N. Y.), 39 Fed. Supp. 67;

Toksig v. Bruce Publishing Company, 101 F. 2d 164;

Mathews Conveyor Company v. Palmer-Bee Company, 135 F. 2d 73, 85;
Mazer v. Stein, 347 U. S. 201;
Arnstein v. Porter, 154 F. 2d 464,

and the copyright authorities:

Nicholson, "Manual of Copyright Practice";
Howell, "The Copyright Law";
Lindey, "Plagiarism and Originality";
Weil, "The American Copyright Law";
Ball, "Law of Copyright and Literary Property";
Amdur, "Copyright, Its History and Its Law";
Bowker, "Copyright, Its History and Its Law";
Ladas, "International Protection of Literary and Artistic Property";
Wincor, "Copyright Law of the United States of America."

Against proper parties the cause of the expanded litigation, cause of action has been brought three times, defendants demurring only, admitting, avoiding answer, defaulting, and the litigation deferring or interrupting decision as in the Order on appeal herein.

The full files of all causes are before the Court, *Edward Dunbar O'Brien v. Frank Sinatra, et al.*, No. 1161-57PH; *Edward Dunbar O'Brien v. Frank Sinatra, et al.*, No. 43-59TC; *Edward Dunbar O'Brien v. Frank Sinatra, et al.*, No. 1351-60HW to be heard here-upon (as No. 17752 C. C. A. 9) and will be followed by the defendants having raised cause of action again,—demurring, admitting, deferring—(No. 17923 C. C. A. 9) unless the whole is resolved by reversal herein.

The original Complaint [Tr. of Rec. p. 1] and the Amended Complaint II [Tr. of Rec. p. 242] on appeal before this Court, against the Order of Dismissal applied to it are, nevertheless, the incontrovertible

1. Form 17 dictated by the Supreme Court from the Appendix of Forms annexed to the Federal Rules of Civil Procedure,

2. as settled in *Bobrecker v. Denebeim*, 39 U. S. P. Q. 336 (D. C. W. Mo. 1938), "it is sufficient if the petition alleges that plaintiff is the proprietor of the copyrighted work and that it has been infringed by defendant(s),"

3. and the same rule in favor of such bill laid down by the Supreme Court in *Mumm v. Decker*, 301 U. S. 168, 33 U. S. P. Q. 247 (1937), overruling eight of the Circuit Courts of Appeals respecting such bill, yet

4. "sets forth affirmatively all the acts done" (*Foreign and Domestic Music Corp. v. Twentieth Century Fox Film Corp.*, 34 U. S. P. Q. 109 (D. C. S. N. Y., 1937)),

5. and is validated by "the evidentiary value of the certificates of registration as establishing prima facie valid copyrights in the plaintiff," (*Chautauqua School v. National School*, 211 F. 1014 (D. C. W. N. Y., 1914), citing Section 55 of the Copyright Act (1909), and *Witmark v. Calloway*, 22 F. 2d 412 (D. C. E. Tenn., 1927).)

6. "admitted in any court" as such (Section 55 of the Copyright Act, 1909) and the said certificates of registration so displayed in the Courtroom herein,

7. and the Complaint supersessively substantiated by the expansive "EXHIBITS" [Tr. of Rec. pp. 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, and 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, and 102] filed in accord with Rule 2 of the Rules Adopted By The Supreme Court of the United States for Practice and Procedure Under Section 25 of An Act to Amend and Consolidate the Acts Respecting Copyright, Approved March 4, 1909, as amended, which

8. "the works themselves supersede and control any allegations or conclusions of fact about them or descriptions of them in the complaint" per *Shipman v. R.K.O. Radio Pictures, Inc.*, 35 U. S. P. Q. 242 (1937).

III.

Statutes Involved.

The Constitution of the United States, Article I, Section 8, empowers Congress: "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." wherefrom the first federal Copyright Act of May 31, 1790 (1 St. L. 124) provided "any person who shall print or publish any *manuscript* without the consent of the author or proprietor first obtained . . . be liable to such author or proprietor for . . . such injury," this fundamental remaining in:

Title 17, United States Code, Section 1:

"Exclusive Rights As To Copyrighted Works.
—Any person entitled thereto, upon complying with the provisions of this Title shall have the exclusive right: (a) To print, reprint, publish, copy,

and vend the copyrighted work; (b) to translate . . . or make any other version thereof, if it be a literary work; to dramatize it if it be a non-dramatic work; to convert it . . . if it be a drama; to arrange or adapt it if it be a musical work; (c) To deliver, authorize the delivery of, read, or present the copyrighted work in public for profit . . . ; to make or procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, delivered, presented, produced or reproduced; and to exhibit, represent, produce, or reproduce it any manner whatsoever; (d) To perform or represent the copyrighted work publicly if it be a drama or . . . to vend any manuscript or any record whatsoever thereof; to make or procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce or reproduce it in any manner or by any method whatsoever; and (e) To perform the copyright work publicly for profit . . . to make any arrangement or setting . . . in which the thought of an author may be recorded or from which it may be read or reproduced;”.

Title 17, United States Code, Section 2:

“Nothing in this title shall be construed to annul or limit the right of the author or proprietor of unpublished work . . . to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor.”

Title 17, United States Code, Section 3:

“The copyright provided by this title shall protect all . . . component parts of the work copyrighted, and all matter therein in which copyright is already subsisting . . .”

Title 17, United States Code, Section 4:

“All Writings Of Author Included.—The works for which copyright may be secured under this title shall include all the writings of an author.”
Etc.

Title 17, United States Code, Section 18:

“Making False Affidavit.—Any person who, for the purpose of obtaining registration of a claim to copyright shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor and upon conviction . . . punished . . . and all of his rights and privileges under said copyright shall thereafter be forfeited.”

Title 17, United States Code, Section 101:

“INFRINGEMENT.—If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

(a) To an injunction . . .

(b) Damages and Profits;—To pay to the copyright proprietor . . . all the profits which the infringer shall have made from such infringement . . . nor shall . . . limitation as to the amount of recovery apply . . . after actual notice to a defendant, either by service of process in a suit or other written notice served upon him.”

“Fourth. In the case of dramatic or dramatico-musical . . . for every subsequent infringing performance. . . .” Etc.

Title 17, United States Code, Section 104:

“Willful Infringement For Profit.—Any person who willfully and for profit shall infringe any copyright secured by this title, or who shall knowingly and willfully aid and abet such infringement, shall be guilty of a misdemeanor, . . .”

The Appendix of Forms annexed to the Federal Rules of Civil Procedure furnishes the following form of Complaint for Infringement of Copyright and Unfair Competition, indicating the simplicity and brevity which the rules contemplate:

Form 17—Complaint For Infringement of Copyright and Unfair Competition.

1. Allegation of jurisdiction.
2. Prior to . . . plaintiff, who then was and ever since has been a citizen of the United States, created and wrote an original book, entitled . . .
3. This book contains a large amount of material wholly original with plaintiff and is copy-rightable subject matter under the laws of the United States.
4. Between . . . , and . . . , plaintiff complied in all respects with the Act of (give citation) and all other laws governing copyright and secured the exclusive rights and privileges in and to the copy-right of said book, and received from the Register of Copyrights a certificate of registration, dated and identified as follows: Date, Class. . . . No.

5. Since . . . , said book has been published by plaintiff and all copies of it made by plaintiff or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of . . . and all other laws governing copyright.

6. Since . . . , plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said book.

7. After . . . , defendant infringed said copyright by publishing and placing upon the market a book entitled . . . , which was copied largely from plaintiff's copyrighted book, entitled . . .

8. A copy of plaintiff's copyrighted book is hereto attached as "Exhibit 1"; and a copy of defendant's infringing book is hereto attached as "Exhibit 2".

9. Plaintiff has notified defendant that defendant has infringed the copyright of plaintiff, and defendant has continued to infringe the copyright.

Wherefore plaintiff demands:

(1) That defendant, his agents, and servants be enjoined during the pendency of this action and permanently from infringing said copyright of said plaintiff in any manner.

(2) That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and to

account and pay over to plaintiff all the gains, profits and advantages derived by defendant from his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than.....

(3) That defendant be required to deliver up to be impounded during the pendency of this action all copies in his possession or under his control infringing said copyright and to deliver up for destruction all infringing copies and all plates, molds, and other matter for making such infringing copies.

(4) That defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

(5) That plaintiff have such other and further relief as is just.

Rule 73, F. R. C. P.: Appeal to a Court of Appeals (a) Within 30 days. (b) Notice of Appeal.

Rule 74, F. R. C. P.: Joint or Several Appeals to the Supreme Court or to a Court of Appeals; Summons and Severance Abolished.

Rule 75, F. R. C. P.: Record on Appeal to a Court of Appeals (a) Designation of Contents of Record on Appeal, (the Transcript of record herein is the complete record). (b) Reporter's Transcript, (all proceedings herein are complete).

IV.

Statement of the Case and Questions Presented.

Complaint, of itself invulnerable,—Form 17, validated by the Certificates of Registration, and substantiated by the expansive “EXHIBITS,” reads as follows [Tr. of Rec. pp. 248-260] :

“In the United States District Court, Southern District of California, Central Division.

Edward Dunbar O'Brien v. Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., Dore Schary, Sol Siegel, Metro-Goldwyn-Mayer, Inc., Samuel Goldwyn, Rudolf Monta, Joseph Pasternak, Harry Lillis Crosby, George Murphy, Cole Porter, John Patrick, Sammy Cahn, Nicholas Brodzsky, Helen Rose, George Wells, June Allison, Lauren Bacall, Gregory Peck, Broderick Crawford, George Seaton, Gordon Jenkins, Capitol Records, Inc., Warner Brothers Pictures, Inc., National Broadcasting Company, Inc., Columbia Broadcasting System, Inc., American Broadcasting Company-Paramount Theatres, Inc., Liggett & Myers Tobacco Company, Inc., Bulova Watch Company, General Motors Corporation, Decca Records, Inc. Civil Action No. 1351-60HW.

AMENDED COMPLAINT II FOR INFRINGEMENT OF COPYRIGHT AND UNFAIR COMPETITION.

Comes Now The Plaintiff, Edward Dunbar O'Brien, and by leave of Court first had and obtained, for cause of action alleges :

I.

The Court has original jurisdiction, Title 28, United States Code, Section 1338(a), this cause arising under the copyright laws of the United States, Title 17, United States Code, Copyright Code, Act of July 30, 1947, 61 Stat. 652, as amended, and the Universal Copyright Convention.

II.

The plaintiff is a citizen of the United States and resident of the State of California, and the defendants, where individuals, are domiciled, and where corporations, are domesticated in the State of California, in the jurisdiction of the United States District Court for the Southern District of California, Central Division, and the parties are therefore properly before the Court.

III.

That plaintiff at all times mentioned herein has been and he is now engaged in the business of creating and writing original books and music and publishing the same under the name of Edward Dunbar O'Brien and 'O'Brien Music,' the said containing material wholly original with plaintiff and copyrightable subject matter under the laws of the United States, and specifically and ever since the year 1941 the plaintiff has complied in all respects with the copyright laws of the United States and secured the exclusive rights and privileges in and to the copyright of the said books and music and received from the Register of Copyrights the universal and individual certificates of registration dated and identified as follows:

'The Library Of A Lifetime'—Edward Dunbar
O'Brien A283713 12/31/56;

'The Gettysburg Hymn,' Eu373849 5/1/44, 1st
Edition E96858 1/12/56; 3rd Edition E104688
8/18/56; 4th Edition A283713 12/31/56, from
'The Proclamation,' A283713 12/31/56 and
Eu268782 9/2/41 and Eu375473 12/4/43 and
Eu373848 5/1/44;

'45th, — From Broadway To 8th Avenue,'
Eu402496 7/12/55, Eu36654 8/25/46, catalogue
E96858 1/12/56, catalogue E104688 8/18/56,
A283713 12/31/56;

'Concerto of Two Hearts,' Eu51047 8/25/46
and A283713 12/31/56 and Eu394199 4/15/55
and Eu394157 4/19/55 and catalogues E96858
1/12/56 and E104688 8/18/56;

'Lover's Hour,' E98320 4/2/56 and A283713
12/31/56 and catalogues E96858 1/12/56 and
E104688 8/18/56;

'Miss Beautiful, Please Will You Be Mrs. Me?'
E98691 4/25/56 and catalogue E104688 8/18/56,
A283713 12/31/56;

'Paddlewheel', A283713 12/31/56 and Eu36653
8/25/46 and catalogue E96858 1/12/56,
E104688 8/18/56;

'Heartstrings,—Music On The Heartstrings'
A283713 12/31/56, and catalogues E96858 1/
12/56, E104688 8/18/56, and Eu419511 12/12/
55, E104689 12/26/56, E115277 1/4/57,
E115276 1/4/57;

'The Eve—Christmas Cards,' A283713 12/31/56, catalogue E104688 8/18/56 and E104690 12/7/56;

'Buddies,—The Story of The Gettysburg Hymn,' A283713 12/31/56 and catalogue E104688 8/18/56, and E98320 4/2/56 and E98691 4/25/56 and Eu375474 12/4/43;

'Call Me Mom.,' A283713 12/31/56, catalogue E96858 1/12/56 and E104688 8/18/56 and E98320 4/2/56;

'The 2nd Battle of Gettysburg,—SEE?' A283713 12/31/56.

IV.

That plaintiff created and wrote the original books and music in Paragraph III above, and all of the original books and music inclusive thereof and comprehended in the 'Library Of A Lifetime' of Edward Dunbar O'Brien, certificate of registration A283713 12/31/56.

V.

Since September 2, 1941, plaintiff has been and is now the sole proprietor of all rights, title and interest in and to the copyrights in the said books and music.

VI.

Since January 12, 1955, said books and music have been published by plaintiff and all copies thereof created thereby, written and made under the license and authority of said copyright proprietorship have been printed, bound and published in strict conformity with all of the laws governing copyright.

VII.

Plaintiff is informed and believes, and therefore alleges, that the defendant Frank Sinatra has been at all times mentioned herein and is now the owner and in charge of the business transactions conducted by 'Barton Music Publishers, Inc.,' a corporation, and that the said Frank Sinatra is therefore the 'alter ego' of such corporation.

Plaintiff is informed and believes, and therefore alleges, that the defendant Harry Lillis Crosby at all times mentioned herein has been and is now the owner and in charge of the business transactions conducted by 'Bing Crosby Enterprises, Inc.,' a corporation, and that the said Harry Lillis Crosby is therefore the 'alter ego' of such corporation.

Plaintiff is informed and believes, and therefore alleges, that the defendant Columbia Broadcasting System, Inc., at all times mentioned herein has been and is now the owner and in charge of the business transactions conducted by 'Bing Crosby Enterprises, Inc.,' a corporation, and that the said Columbia Broadcasting System, Inc., is therefore the 'alter ego' of such corporation. Plaintiff is informed and believes, and therefore alleges, that the defendant Samuel Goldwyn at all times mentioned herein has been and is now owner and in charge of the business transactions conducted by 'Metro-Goldwyn-Mayer, Inc.,' a corporation, and that the said Samuel Goldwyn is therefore the 'alter ego' of such corporation.

VIII.

After July 12, 1955, defendants conspired and confederated, combined, concerted and agreed to infringe, and they have infringed said copyrights by copying and appropriating from manuscript and printed copies thereof and private letters of plaintiff referring thereto, submitted and communicated to defendants and retained in the possession of the defendants, and by marketing, exhibiting and selling to the general public against the will and secretly and without the consent, authority or license of the plaintiff, copyright proprietor, and by using the language, dialogue, wordings, writing, sequence, story, songs, lyrics, scenes, settings, costumes, characters, sense, substance, point, purpose, expression and effect of the plaintiff's copyrighted writings and private letters the motion pictures: 'High Society,' 'The Opposite Sex,' 'Designing Woman,' 'Wings of Victory,' 'The Joker Is Wild,' or 'The Joker,' 'Royal Wedding,' 'Gigi,' 'Say One For Me'; the musical 'Manhattan Tower'; the programs: 'Entertainment Programs, National Conventions of 1956,' the 'Democratic Fund-Raising Program, October 20, 1956,' the 'Frank Sinatra Show, 1957-58' and the same May, 1960, and November, 1960, the 'Bing Crosby Show,' October, 1958 and September, 1959; the record album 'Lover's Hour'; the songs: '11th Hour Melody' and 'Mr. Success'; the play: 'The Defender'; press releases; the 'Academy Awards Ceremonies,' 1957, 1958, 1959; broadcast: 'Ed Sullivan Show,' February, 1959, and re-performance of the motion pictures: 'High Society,' March 22-28, 1961, 'Designing Woman,'

April 5-11, 1961 and re-broadcasts from the motion picture 'High Society,' March 5, 1961 and May 2, 1961, by and in the following manner and means:

1. July 12, 1955, plaintiff furnished to the defendant Broderick Crawford the volumes of '45th,—From Broadway To 8th Avenue' of plaintiff, to submit to the defendant Frank Sinatra, and from which the motion pictures 'High Society,' 'The Opposite Sex,' 'Wings of Victory,' 'Designing Woman,' 'Royal Wedding,' 'Say One For Me' are copied, the said volumes of '45th,—From Broadway To 8th Avenue' of plaintiff continuing to be retained in defendants' possession.

2. September 2, 1955, plaintiff furnished to the defendant William Morris Agency, Inc., the volumes of '45th,—From Broadway To 8th Avenue,' 'Concerto of Two Hearts,' and 'Paddlewheel,' of plaintiff, and from which the motion pictures 'High Society,' 'The Opposite Sex,' 'Designing Woman,' 'Royal Wedding,' 'Gigi,' 'Say One For Me,' and the song 'Mr. Success,' and the 'Frank Sinatra Show,' 1957-58 and press releases there-concerning are copied, copies of the said volumes of plaintiff continuing to be retained in defendants' possession.

3. March, 1956, the defendant Dore Schary, producer, and defendant Warner Brothers Pictures, Inc., a Delaware corporation, manufacturer, exhibited to the general public the motion picture 'Wings of Victory' copying from the said '45th,—From Broadway to 8th Avenue,' of the plaintiff as above obtained.

4. August 13, 1956, defendants Frank Sinatra, actor-singer; Dore Schary, now producer for defendant Metro-Goldwyn-Mayer, Inc., a Delaware corporation, Henry Sanicola, manager of the defendant Frank Sinatra, and defendant William Morris Agency, Inc., a New York corporation, forcibly appropriated from plaintiff the Entertainment Program of the Democratic National Convention of 1956, and forcibly displaced plaintiff and the copyright property 'The Gettysburg Hymn' of plaintiff from such program proposed by plaintiff and communicated to the said defendants thereby, the said defendants publicly announcing their intent of using such program to advertise the motion picture 'High Society,' and the said displacement of plaintiff from such program proposed by plaintiff involving the displacement and disparagement of 'The Gettysburg Hymn' of plaintiff previously submitted to defendant Columbia Broadcasting System, Inc., a California corporation, and defendant Frank Sinatra in manuscript January 12, 1955, the said manuscript continuing to be retained in the possession of the defendant Frank Sinatra.

5. August 20, 1956, defendant George Murphy, public relations officer of defendant Metro-Goldwyn-Mayer, Inc., a Delaware corporation, appropriated the Entertainment Program of the Republican National Convention of 1956 from plaintiff, displacing plaintiff from such program proposed by plaintiff and communicated to defendant George Murphy thereby.

6. August 28, 1956, the motion picture 'High Society' was exhibited to the general public dis-

playing therein the copying of the volumes of '45th,—From Broadway To 8th Avenue' of plaintiff and 'Lover's Hour,' and 'Miss Beautiful, Please Will You Be Mrs. Me?' thereof by the defendants Frank Sinatra, actor-singer, Harry Lillis Crosby, actor-singer, Metro-Goldwyn-Mayer, Inc., a Delaware corporation, manufacturer, Dore Schary, 'Chief of Production' thereof, Sol Siegel, producer, 'music and lyrics' by defendant Cole Porter, 'written by' defendant John Patrick, 'designer' defendant Helen Rose, advertised by defendant George Murphy, public relations officer of defendant Metro-Goldwyn-Mayer, Inc., recorded by defendant Capitol Records, Inc., a California corporation, from the copies of the volumes of '45th,—From Broadway To 8th Avenue' of plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation.

7. Defendant Capitol Records, Inc., a California corporation, infringed the 'Lover's Hour' of plaintiff from April, 1956, by circulating, broadcasting and selling to the general public the recording '11th Hour Melody' copying and appropriating from the lyrics of the said 'Lover's Hour' of plaintiff.

8. August 30, 1956, plaintiff notified the defendants that defendants infringed copyrights of the plaintiff in the motion picture 'High Society.' The defendants Frank Sinatra, Dore Schary, Henry Sanicola, manager of defendant Frank Sinatra, William Morris Agency, Inc., a New York corporation, copied and appropriated the statements of

plaintiff in such communication and published and broadcast the same in the 'Democratic Fund-Raising Program of October 20, 1956' thereby giving publication to a private letter without the consent of the writer or authority of law, and infringing therefore the same.

9. October 23, 1956, defendants exhibited to the general public the motion picture 'The Opposite Sex' displaying therein the copying of the volumes of '45th—From Broadway To 8th Avenue' and 'Concerto of Two Hearts' of plaintiff by defendants Metro-Goldwyn-Mayer, Inc., a Delaware corporation, Dore Schary, 'Chief of Production' thereof, June Allison, actress-singer, Joseph Pasternak, producer, 'music and lyrics' by defendant Sammy Cahn and Nicholas Brodzsky, advertised by defendant George Murphy, and with the motion picture 'High Society' authorized by defendant Samuel Goldwyn, defended by threatening communication to the plaintiff by defendant Rudolf Monta, employee representing the defendant Metro-Goldwyn-Mayer, Inc., a Delaware corporation, the said motion picture 'The Opposite Sex' made by copying from the volumes of '45th,—From Broadway To 8th Avenue' of plaintiff furnished to the defendant Broderick Crawford thereby, and the copies of '45th,—From Broadway To 8th Avenue' and 'Concerto of Two Hearts' of plaintiff in the possession of defendant William Morris Agency, Inc.

10. October 26, 1956, the defendant Gordon Jenkins, National Broadcasting Company, Inc., a Delaware corporation, General Motors Corporation, a Delaware corporation, infringed the work 'Heart-

strings,—Music On The Heartstrings,' of plaintiff by copying and appropriating therefrom and by exhibiting the said copying and appropriations therefrom to the general public under the name style and title of the musical 'Manhattan Tower,' written by defendant Gordon Jenkins, broadcast by defendant National Broadcasting Company, Inc., a Delaware corporation, the said broadcast sponsored by the defendant General Motors Corporation, a Delaware corporation, and such musical recorded by defendant Capitol Records, Inc., a California corporation.

11. From September, 1956, defendant Frank Sinatra, manager Henry Sanicola and agent William Morris Agency, Inc., a New York corporation, copied from a private letter written by plaintiff and sent through the United States mails to the defendant Frank Sinatra, and thereafter advertised a motion picture under the name, style and title of 'The Joker,' as copied from the said private letter and thereby giving publication thereto without the consent of the writer or authority of law and infringing therefore the same.

12. February, 1957, defendant National Broadcasting Company, Inc., a Delaware corporation, broadcast the musical under the name, style and title 'Ruggles of Red Gap,' with the intent of infringing 'The Gettysburg Hymn' and 'Buddies,—The Story of The Gettysburg Hymn' of plaintiff submitted thereby to the said defendant.

13. February 18, 1957, defendant Columbia Broadcasting System, Inc., a California corpora-

tion, infringed the work 'Buddies,—The Story of The Gettysburg Hymn' of plaintiff by copying therefrom and altering and advertising 'The Defender' and exhibiting the same to the general public as copied from 'Buddies,—The Story of The Gettysburg Hymn' of plaintiff.

14. March, 1957, defendants Metro-Goldwyn-Mayer, Inc., a Delaware corporation, manufacturer, Dore Schary, 'Chief of Production' thereof, under authority of defendant Samuel Goldwyn, presenting the performers defendant Lauren Bacall and Gregory Peck, 'written by' defendant George Wells, 'designed' and 'suggested by' defendant Helen Rose, advertised by defendant George Murphy, public relations officer of defendant Metro-Goldwyn-Mayer, Inc., a Delaware corporation, infringe '45th,—From Broadway To 8th Avenue' of plaintiff by copying the motion picture 'Designing Woman' therefrom and exhibiting the said motion picture to the general public, copied from the volumes of the said '45th,—From Broadway To 8th Avenue' of plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation.

15. April, 1957, defendant George Seaton, president, the Academy of Motion Picture Arts and Sciences, broadcast by defendant National Broadcasting Company, Inc., a Delaware corporation, with the defendants Frank Sinatra, Harry Lillis Crosby, Henry Sanicola, Metro-Goldwyn-Mayer, Inc., a Delaware corporation, Dore Schary, Sol Siegel, Cole Porter, John Patrick, Helen Rose, George Murphy, Capitol Records, Inc., a California

corporation, infringed the said copyrights of the plaintiff by exhibiting to the general public from the motion picture 'High Society' copied from the volumes of '45th,—From Broadway To 8th Avenue' of plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation.

16. December, 1956 to January 25, 1958, defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., a New York corporation, infringed '45th,—From Broadway To 8th Avenue' and 'Concerto of Two Hearts' of plaintiff by copying therefrom and exhibiting and publishing to the general public said copying by press releases copied from the volumes of the said '45th,—From Broadway To 8th Avenue' and 'Concerto of Two Hearts' of plaintiff submitted thereby to the said defendants.

17. February, 1957, defendants Metro-Goldwyn Mayer, Inc. a Delaware corporation, manufacturer; Dore Schary, producer; authorized by defendant Samuel Goldwyn; advertised by defendant George Murphy; broadcast by defendant Columbia Broadcasting System, Inc., a California corporation, infringed '45th,—From Broadway To 8th Avenue' of plaintiff by copying therefrom and exhibiting said copying to the general public under the name, style and title of the motion picture 'Royal Wedding,' copied from the volumes of the said '45th,—From Broadway To 8th Avenue' of plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation.

18. October, 1957, to June, 1958, defendants Frank Sinatra, manager Henry Sanicola, William Morris Agency, Inc., a New York corporation, broadcaster American Broadcasting Company-Paramount Theatres, Inc., a California corporation, sponsored by defendants Liggett & Myers Tobacco Company, a New Jersey corporation, and Bulova Watch Company-Bulova Research and Development Corporation, a California corporation, infringed '45th,—From Broadway To 8th Avenue,' 'Concerto of Two Hearts' and private letters of plaintiff by copying therefrom and exhibiting said copying to the general public under the name, style, and title of the 'Frank Sinatra Show,' copied from the volumes of said works of plaintiff submitted thereby to the defendant William Morris Agency, Inc., a New York corporation, and private letters of plaintiff sent through the United States mails addressed to the said defendant Frank Sinatra.

19. April, 1958, defendant George Seaton, president, the Academy of Motion Picture Arts and Sciences, broadcast by defendant National Broadcasting Company, Inc., a Delaware corporation, with the defendants Metro-Goldwyn-Mayer, Inc., a Delaware corporation, manufacturer; Dore Schary, producer, under authority of defendant Samuel Goldwyn, defendants Lauren Bacall, Gregory Peck, George Wells, Helen Rose, George Murphy, infringed '45th,—From Broadway To 8th Avenue' of plaintiff by exhibiting to the general public the motion picture 'Designing Woman' copied from the volumes of the said '45th,—From Broadway To 8th Avenue' of plaintiff submitted thereby to

the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation.

20. April 7-27, 1958, defendant Decca Records, Inc., a California corporation, and defendant Columbia Broadcasting System, Inc., a California corporation, broadcaster, infringed the 'Lover's Hour' copyrights of the plaintiff by copying the same and exhibiting said copy to the general public without the authority, license or consent of the said copyright proprietor.

21. April 18, 1958, terms of settlement for the acts of defendants herein, solicited from the plaintiff by defendants National Broadcasting Company, Inc., a Delaware corporation; Columbia Broadcasting System, Inc., a California corporation, General Motors Corporation, a Delaware corporation, and Decca Records, Inc., a California corporation, were furnished to the defendants National Broadcasting Company, Inc., and Columbia Broadcasting System, Inc., by the plaintiff, sent through the United States mails addressed to the representatives of the said defendants National Broadcasting Company, Inc., and Columbia Broadcasting System, Inc., and respecting the manuscript copy of 'Heartstrings,—Music On The Heartstrings' of plaintiff demonstrating the infringement thereof charged in this Paragraph VIII, sub-paragraph 10, lines 10 to 21, page 8 of this Amended Complaint II.

Thereafter, the defendants National Broadcasting Company, Inc., a Delaware corporation, and Columbia Broadcasting System, Inc., a California corporation, infringed the said settlement state-

ments solicited from the plaintiff thereby, by copying and exhibiting and broadcasting said copying to the general public, thereby giving publication to a private letter without the consent of the writer or authority of law and infringing therefore the same. The defendants National Broadcasting Company, Inc., a Delaware corporation, and Columbia Broadcasting System, Inc., a California corporation, further, retain in their possession the manuscript copy of 'Heartstrings,—Music On The Heartstrings' of plaintiff mentioned herein.

22. July 9, 1958, the defendants William Morris Agency, Inc., a New York corporation, and Sammy Cahn infringed the 'Concerto of Two Hearts' of plaintiff by copying therefrom and exhibiting said copying to the general public by press release copied from the volume of the said 'Concerto of Two Hearts' of plaintiff submitted thereby to defendant William Morris Agency, Inc., a New York corporation.

23. 1958, defendants Metro-Goldwyn-Mayer, Inc., a Delaware corporation, manufacturer; Dore Schary, producer, under authority of defendant Samuel Goldwyn, advertised by defendant George Murphy, public relations officer of defendant Metro-Goldwyn-Mayer, Inc., and defendant William Morris Agency, Inc., a New York corporation, infringed 'Concerto of Two Hearts' of plaintiff by copying therefrom and exhibiting said copying to the general public under the name, style and title of the motion picture 'Gigi,' copied from the said 'Concerto of Two Hearts' of plaintiff submitted

thereby to the defendant William Morris Agency, Inc., a New York corporation.

24. October 1, 1958, defendants Harry Lillis Crosby and American Broadcasting Company-Paramount Theatres, Inc., a California corporation, infringed the said copyrights of the plaintiff in Paragraph III of this Amended Complaint II and referred-to in Paragraph VIII, sub-paragraph 6, 'High Society,' lines 29-32, page 6, and 1-10, page 7 hereof, by copying therefrom and by exhibiting and broadcasting to the general public the said copying in the motion picture 'High Society' under the name, style and title of the 'Bing Crosby Show,' October 1, 1958.

25. October, 1958, the defendant Frank Sinatra, Henry Sanicola, a William Morris Agency, Inc., a New York corporation, infringed '45th,—From Broadway To 8th Avenue' of plaintiff by copying therefrom and exhibiting and broadcasting and selling to the general public the said copying under the name, style and title of the song 'Mr. Success' copied from the volumes of the said '45th,—From Broadway To 8th Avenue' of plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation.

26. December, 1958, and through the year 1959, defendants Harry Lillis Crosby and Sammy Cahn infringed '45th,—From Broadway To 8th Avenue' and 'The Eve-Christmas Cards' of plaintiff by copying therefrom and exhibiting the said copying to the general public under the name, style

and title of the motion picture 'Say One For Me,' manufactured by 'Bing Crosby Enterprises, Inc.,' a California corporation.

27. February 8, 1959, defendant Columbia Broadcasting System, Inc., a California corporation, infringed 'The Gettysburg Hymn,' 'Buddies—The Story of The Gettysburg Hymn' of plaintiff and private letters given publication without the consent of the writer or authority of law and infringed therefore by said defendant Columbia Broadcasting System, Inc., by copying and exhibiting to the general public program proposed and submitted thereto by the plaintiff January 12, 1955, January 12, 1956, January 12, 1957, and again January 22, 1959, the said copying presented to the general public by the defendant Columbia Broadcasting System, Inc., a California corporation, under the name, style and title of the 'Ed Sullivan Show, February 8, 1959.'

28. April, 1959, defendants George Seaton, president, the Academy of Motion Picture Arts and Sciences, National Broadcasting Company, Inc., a Delaware corporation, broadcaster, Metro-Goldwyn-Mayer, Inc., a Delaware corporation, manufacturer, Dore Schary, producer, under authority of defendant Samuel Goldwyn, advertised by defendant George Murphy, public relations officer of defendant Metro-Goldwyn-Mayer, Inc., and defendant William Morris Agency, Inc., a New York corporation, infringed 'Concerto of Two Hearts' of plaintiff by copying therefrom and exhibiting the said copying to the general public under the name, style and title of the motion picture 'Gigi' copied

from the said 'Concerto of Two Hearts' of plaintiff submitted thereby to the defendant William Morris Agency, Inc., a New York corporation.

29. September 29, 1959, defendant Harry Lillis Crosby, defendant Frank Sinatra, and defendant American Broadcasting Company-Paramount Theatres, Inc., a California corporation, infringed the said copyrights of the plaintiff in Paragraph III of this Amended Complaint II and referred-to in Paragraph VIII, sub-paragraph 6, 'High Society,' lines 29-32, page 6, and 1-10, page 7 hereof by copying therefrom and by exhibiting and broadcasting to the general public the said copying in the motion picture 'High Society,' by the defendants Frank Sinatra, Harry Lillis Crosby, Metro-Goldwyn-Mayer, Inc., Dore Schary, Sol Siegel, Cole Porter, John Patrick, Helen Rose, George Murphy, Capitol Records, Inc., Samuel Goldwyn, from the copies of the volumes under the said copyrights of the plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation, the said infringement here dated and described being broadcast by the defendants Harry Lillis Crosby, Frank Sinatra and American Broadcasting Company-Paramount Theatres, Inc., a California corporation, under the name, style and title of the 'Bing Crosby Show,' September 29, 1959.

30. May, 1960, defendant Frank Sinatra and Sammy Cahn, Henry Sanicola, William Morris Agency, Inc., a New York Corporation, and American Broadcasting Company-Paramount Theatres,

Inc., a California corporation, infringe the said copyrights of the plaintiff, 'The 2nd Battle of Gettysburg,—SEE?' and the 'Library Of A Lifetime' therefore by copying therefrom and by exhibiting and broadcasting to the general public the said copying under the name, style and title of the 'Frank Sinatra Show, May, 1960.'

31. November 1, 1960, defendants Frank Sinatra, Henry Sanicola, William Morris Agency, Inc., a New York corporation, and American Broadcasting Company-Paramount Theatres, Inc., a California corporation, infringed the said copyrights of the plaintiff in Paragraph III of this Amended Complaint II and referred-to in Paragraph VIII, sub-paragraph 6, 'High Society,' lines 29-32, page 6, and 1-10, page 7 hereof by copying therefrom and exhibiting and broadcasting to the general public the said copying under the name, the 'Frank Sinatra Show,' in the motion picture 'High Society,' copied by the defendants Frank Sinatra, Harry Lillis Crosby, Metro-Goldwyn-Mayer, Inc., Dore Schary, Sol Siegel, Cole Porter, John Patrick, Helen Rose, George Murphy, Capitol Records, Inc., Samuel Goldwyn, from the copies of the columns under the said copyrights of the plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc.

32. March 5, 1961, the defendant Columbia Broadcasting System, Inc., a California corporation, infringed said copyrights of the plaintiff by copying therefrom and by exhibiting and broadcasting to the general public the said copying un-

der the name, style and title of the 'Ed Sullivan Show, March 5, 1961,' in the motion picture 'High Society,' copied by the defendants Frank Sinatra, Harry Lillis Crosby, Metro-Goldwyn-Mayer, Inc., Dore Schary, Sol Siegel, Cole Porter, John Patrick, Helen Rose, George Murphy, Capitol Records, Inc., Samuel Goldwyn, from the copies of the volumes under the said copyrights of the plaintiff submitted thereby the defendants Broderick Crawford and William Morris Agency, Inc.

33. March 22-28, 1961, defendants Frank Sinatra, Harry Lillis Crosby, Metro-Goldwyn-Mayer, Inc., a Delaware corporation, Dore Schary, Sol Siegel, Cole Porter, John Patrick, Helen Rose, George Murphy, Capitol Records, Inc., a California corporation, Samuel Goldwyn, infringed the said copyrights of the plaintiff in Paragraph III of this Amended Complaint II and referred-to in Paragraph VIII, sub-paragraph 6, 'High Society,' lines 29-32, page 6 and 1-10, page 7 hereof by the copying therefrom and by re-exhibiting to the general public the said copying under the name, style and title of the motion picture 'High Society,' copied by the said defendants from the copies of the volumes under the said copyrights of the plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, a New York corporation.

34. April 5-10, 1961, defendants Metro-Goldwyn-Mayer, Inc., a Delaware corporation, Dore Schary, Samuel Goldwyn, Lauren Bacall, Gregory Peck, George Wells, Helen Rose, George Murphy,

William Morris Agency, Inc., a New York corporation, infringed the said copyrights of the plaintiff in Paragraph III of this Amended Complaint II and referred-to in Paragraph VIII of this Amended Complaint II, sub-paragraph 14, lines 7-19, page 9 hereof by the copying therefrom and by re-exhibiting to the general public the said copying under the name, style and title of the motion picture 'Designing Woman,' copied by the said defendants from the copies of the volumes under the said copyrights of the plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation.

35. May 2, 1961, the defendant Columbia Broadcasting System, Inc., a California corporation, infringed the said copyrights of the plaintiff by copying therefrom and by exhibiting and broadcasting to the general public the said copying under the name, style and title of the motion picture 'High Society,' copied by the defendants Frank Sinatra, Harry Lillis Crosby, Metro-Goldwyn-Mayer, Inc., a Delaware corporation, Dore Schary, Sol Siegel, Cole Porter, John Patrick, Helen Rose, George Murphy, Capitol Records, Inc., a California corporation, Samuel Goldwyn, from the copies of the volumes under the said copyrights of the plaintiff submitted thereby to the defendants Broderick Crawford and William Morris Agency, Inc., a New York corporation.

IX.

Copies of plaintiff's copyrighted works and copies of defendants' infringing works are filed with the Clerk of the United States District Court for the Southern District of California, Central Division, marked 'EXHIBITS.'

X.

Plaintiff has notified the defendants that defendants infringed the copyrights of the plaintiff and defendants have continued to infringe said copyrights, defendants at all times mentioned herein aware and apprised of said copyrights and infringing said copyrights with the intent of depriving plaintiff, the copyright proprietor, of the benefits due him thereunder and for the purpose of profiting defendants.

XI.

Defendants, since January 12, 1955, have thereby been engaged in unfair trade practices and unfair competition against plaintiff to plaintiff's irreparable damage.

Wherefore, plaintiff demands:

1. That the defendants, their agents and servants and attorneys, and all persons in active concert and participation with them be enjoined during the pendency of this action and permanently from infringing the said copyrights of the plaintiff in any manner and from disposing of any copies of said infringements.
2. That the defendants be required to pay plaintiff damages in consequence of defendants' infringements of said copyrights and said unfair

trade practices and unfair competition and to account and pay over to the plaintiff:

(a) all gains, profits and advantages derived by defendants from said unfair trade practices and unfair competition and

(b) all gains, profits and advantages derived by defendants from their infringements of plaintiff's copyrights, or such damages as to the Court shall appear proper within the provisions of the Copyright Statutes, but not less than:

Frank Sinatra.....	\$6,500,000
Henry Sanicola.....	Accounting
William Morris Agency, Inc.....	\$8,500,000
Dore Schary	\$6,000,000
Metro-Goldwyn-Mayer, Inc.....	\$23,500,000
Samuel Goldwyn.....	\$1,000,000
Sol Siegel.....	\$1,000,000
Joseph Pasternak.....	Accounting
George Murphy.....	\$500,000
Cole Porter
.....	Accounting and twice the sum thereof
John Patrick
.....	Accounting and twice the sum thereof
Sammy Cahn	\$650,000
Nicholas Brodzsky	\$250,000
Helen Rose
.....	Accounting and twice the sum thereof

George Wells	
.....Accounting and twice the sum thereof	
June Allison	
.....Accounting and twice the sum thereof	
Lauren Bacall	
.....Accounting and twice the sum thereof	
Gregory Peck	
.....Accounting and twice the sum thereof	
Broderick Crawford	Accounting
George Seaton	Accounting
Gordon Jenkins	\$300,000
Harry Lillis Crosby.....	\$4,500,000
Warner Brothers Pictures, Inc.....	Accounting
National Broadcasting Company, Inc.....	
.....	\$16,000,000
Capitol Records, Inc.....	Accounting
Columbia Broadcasting System, Inc..	\$13,000,000
American Broadcasting Company-	
Paramount Theatres, Inc.....	Accounting
General Motors Corporation.....	\$500,000
Rudolf Monta.....	Accounting
Liggett & Myers Tobacco	
Company, Inc.....	Accounting
Bulova Watch Co.-Bulova	
Research & Development Corp.....	Accounting

3. That the defendants be required to deliver-up to be impounded and destroyed all copies of the

said infringements in their possession or under their control.

4. That the defendants pay to the plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the Court.

5. That the plaintiff have such other and further relief as is just.

Willedd Andrews
Attorney for Edward Dunbar O'Brien,
Plaintiff.

State of California, County of Los Angeles—ss

Edward Dunbar O'Brien, being by me first duly sworn, deposes and says: That he is the plaintiff in the foregoing and above-entitled action; that he has read the foregoing Amended Complaint II and knows the contents thereof; that the same is true of his own knowledge, except as to matters stated upon his information and belief, and as to those matters that he believes them to be true.

Edward Dunbar O'Brien, Plaintiff.

(Duly Verified. (Endorsed): Filed 5/26/61.
Page 260 of the Transcript of Record.)"

V.

Statement of Facts.

The Plaintiff-Appellant and counsel, conscious that the Complaint is compelling, anticipated all arguments and decisively demonstrated the Complaint as overpowering any objections by submitting "plaintiff's Brief in Support of the Amended Complaint II" [Tr. of Rec. pp. 262-276] conscious in addition that forms of fraud are fundaments in copyright contests, acts contra-copyright being counterfeits of actual authorship and thus fraud against the actual author and their circulation "fraud against the general public" and therefore that "If the Bill contains an allegation of fraud, it must be denied by answer . . . because fraud gives jurisdiction to the Court and lays a foundation for relief, hence a general demurrer to a bill containing such an allegation cannot be allowed." *Niles v. Anderson*, 5 How. (Miss.) 366.

Where defendants consistently demurred, admitting the whole action to be true, they are hereupon observed to universally default to avoid answer to the Complaint per Rule 15 of the Federal Rules of Civil Procedure. [Tr. of Rec. pp. 265, 277, 278.] "Defendants are required to answer to an amended complaint within 10 days."

The lower Court appealed-from, however, did not examine these universal defaults, as well as it deflected the specific and settled defaults already appearing. [Sammy Cahn, 120 days, Tr. of Rec. pp. 364 and 403; Gordon Jenkins, 90 days, Tr. of Rec. p. 404.]

But, the “Plaintiff’s Brief in Support of the Amended Complaint II,” page 265, Transcript of Record, beginning at line 3 states the strength and precision of the petition and illuminates the prompt reversibility of an Order sustaining demurrers to it as well as it impels defaults abasing themselves:

“Plaintiff’s Brief in Support of the Amended Complaint II. . . . Plaintiff and counsel are conscious that in that hearing of April 18, 1961 in which Your Honor directed the composition of the cause into an Amended Complaint II dispensing with prolonged iteration and reiteration of the whole as separate causes and reducing the whole to ‘short, simple, clear and concise statement desired,’ in accord with Rule 8 (2) and (3e) of the Federal Rules of Civil Procedure and recognizing in favor of such bill,

Mumm v. Decker, 301 U. S. 168, 33 U. S. P. Q. 247 (1937);

Bobreck v. Denebeim, 39 U. S. P. Q. 336, D. C. W. Mo. (1938).

Your Honor also discussed with counsel the proposal to singularize the subjects consolidated in the cause with possible application of ‘severance’ per *Fielder v. Farrell Lines*, 18, Federal Rules Service at page 390, or ‘if it is a conspiracy, then plead it as a conspiracy,’ consolidated, per Rule 42, F. R. C. P., which plaintiff and counsel in the within Brief in Support of the Amended Complaint II seek to clarify in order to advance the action to trial.

II.

Plaintiff and counsel consider that they should bring to the attention of the adverse attorneys that whether the cause is sequestered or confederated Your Honor stated that even one item would be 'not disposing of other issues' and accordingly singularized or consolidated does not relieve any of the defendants or their attorneys of the obligation to answer to the pleading.

Plaintiff and counsel consider that they should bring to the attention of the Court that since the present petition is an amended complaint 'II,' per Rule 15 of the Federal Rules of Civil Procedure the defendants are required to answer to such amended complaint within '10 days.' They have not done so.

III.

Anticipating those argumentations in which the defendants and attorneys admit-then-argue and exhibit that the reasoning-is-reluctance, solicit the plaintiff to consider 'settlements' then proceed to subvert the settlement and to the absorption (as pleaded) of original materials obtained while plaintiff honors their proposals, the plaintiff and counsel would recall that Your Honor has cognized that the now 7 months of defending attorneys' wasteful insistence upon 'separate statements' as they conceive them has resulted in antediluvian, archaic and wholly impractical petitions embodying 66 pages in the one instance and 53 pages in another of repeating the charges over and over again as applied to each individual. Also, that as with this

insupportable trumpery taxing the plaintiff Your Honor has been caused to state to the defendants' attorneys after inviting their reasons in support of a wholly visionary 'adjudication' said to obstruct this cause 'you haven't been able to give me any reasons.'

Plaintiff and counsel submit that no realistic reasons will emerge to resist the present Amended Complaint II, and that answer and answer alone is due and may be in default (per Rule 15, F. R. C. P.) for:

1. Plaintiff and counsel have examined into the procedures of defending attorneys and find as in *Friedman v. Rohauer*, 398-60BH, WM, USDC, SoDist, Calif., (17246 USCA 9th), defending attorneys are, for their own purposes, using the same petition they are proscribing before Your Honor and that such same petition while not as specific, precise or positive as the bill in the present cause, but general, is upheld by the Associate Judges of the United States District Court for the Southern District of California, Central Division, the Honorable Peirson M. Hall, Honorable Ben Harrison, Honorable William Mathis.

2. The petition herein therefore again follows Form 17 from the Appendix of Forms annexed to the Federal Rules of Civil Procedure, 'Complaint for Infringement of Copyright and Unfair Competition' and with the extensive 'Exhibits filed with the Clerk of the Court particularizes its satisfaction of Rule 2 of the Rules Adopted By The Supreme Court of the United States for Prac-

tice and Procedure Under Section 25 of An Act to Amend and Consolidate the Acts Respecting Copyright, Approved March 4, 1909, as amended, now Title 17, U.S.C. codified by Act of July 30, 1947, 61 Stat. 652, as amended.

3. Paragraph I of the petition furnishes 'short and plain statement of jurisdiction' in accord with Rule 8, F.R.C.P., and cites section 1338 (a), Title 28, U.S.C., Act of June 25, 1948, 62 Stat. 869 as well as the above Title 17, U.S.C.

4. Paragraph II states the domiciliary and domesticated status of the parties within the jurisdiction of the Court, recognizing Section 1400, Title 28, U.S.C.

5. Paragraph III enumerates the dated and identified copyrights of the plaintiff.

6. Paragraph IV states that plaintiff created and wrote the protected works and clearly states and enumerates that they are comprehensively copyrighted.

7. Paragraph V identifies that plaintiff retains all rights, title and interest in and to the copyrights.

8. Paragraph VI satisfies the statutory statement that plaintiff is 'in strict conformity with all of the laws governing copyright.'

9. Paragraph VII correctly pleads that certain defendants are the 'alter egos' of corporations using plaintiff's properties, each of these stated in a separate paragraph, separate statement in accord with Rule 10, b, of the Federal Rules of Civil Procedure, each statement embracing a 'single set of

circumstances' to be stated in separate paragraphs when separate statements 'will facilitate clear representation of the matters set forth,' again in accord with Rule 10, b, F.R.C.P.

10. Paragraph VIII noting that 'it is sufficient if the petition alleges that plaintiff is the proprietor of copyrighted work and that it has been infringed by defendant(s) per *Bobreck v. Denebeim*, 39 US PQ, 336, D.C. W.Mo. 1938 and *Mumm v. Decker*, 301 U.S. 168, 33 nevertheless 'sets forth affirmatively all of the acts done' per *Foreign and Domestic Music Corp. v. Twentieth Century Fox Film Corp.*, 34 USPQ 109, DC SNY 1937, in 'short and plain statement of the claim' in accord with Rule 8, (2) F.R.C.P., stating:

'defendants conspired and confederated . . . to infringe,'

'and they have infringed,'

'by copying and appropriating,'

'from manuscript and printed copies and private letters of plaintiff referring thereto,'

'submitted and communicated to defendants and retained,'

'and by marketing and exhibiting and selling to the general public'

'and by using the language, wordings, writing, etc.,' of plaintiff in the specified infringing works,

'by and in the following manner and means:' and the petition thereupon presents 'definite statement' in accord with Rule 12, (e) F.R.C.P., each such statement being a 'separate paragraph,' 'separate statement' Rule 10 (b), F.R.C.P., separately numbered, each 'statement of a single set of cir-

cumstances,' Rule 10 (b), F.R.C.P., recognizing each claim 'founded upon a separate occurrence to be stated in a separate paragraph when separate statement will facilitate clear representation of the matters set forth' again in accord with Rule 10 (b), F.R.C.P. Knowledge and attitude, intent, are 'averred generally' in accord with Rule 9(b) F.R.C.P., in the separately numbered and separately stated sub-paragraph 4, page 6 of Paragraph VIII.

Each occurrence and each group of persons defendant is named in the separate paragraph with the name, style and title of the act, how it occurred, and its effect upon the plaintiff."

The "Plaintiff's Brief in Support of the Amended Complaint II" adds [Tr. of Rec. p. 271, line 20] :

"14. It thus appears that plaintiff and counsel correctly plead the community, commonalty, and continuity of the cause per another of the compelling copyright decisions that the whole incidents 'rest upon substantially identical facts,' *Allen v. Barr*, 87 USPQ 194 DC EMich, 1950,

that the whole present a 'common question' per Rule 42, F.R.C.P.,

that the whole is consistent even though plaintiff may plead 'as many claims, regardless of consistency, and whether based upon legal or equitable grounds,' per Rule 18 (e) 2, of the Federal Rules of Civil Procedure.

that plaintiff and counsel with appropriate discretion submit a positive interpretation of *Fielder v. Farrell Lines*, 89 FRS at 390, herein, in that that

case negatively determines that several plaintiffs were 'without right to relief arising out of the same transaction' and that the respective occurrence were not traceable to the same circumstances, yet *Edward Dunbar O'Brien v. Frank Sinatra, et al*, is one plaintiff with rights to relief traceable to the same, and all arising from the 'same set of circumstances,' *Hurn v. Oursler*, 289 U.S. 238, 19 USPQ 195 (1933).

that the plaintiff 'is entitled to the settlement of the entire controversy in one lawsuit,' and 'may join as many persons as those against whom he has action,' 82, F.R.C.P., and plaintiff and counsel are therefore correctly cognizant of Rules 19, 20, 21, 22, 23, of the Federal Rules of Civil Procedure, in line with Rule 1, 'to secure the just, speedy and inexpensive determination of the action.'

that infringement and its concomitant unfair competition is the 'common question' per 42, F.R. C.P., and 'liability extends . . . to . . . all . . . ' *American Code Company v. Bensinger*, 282 F. 829 (CCA 2, 1922).

that there inheres in the pleadings 'letters and other private communications . . . cannot be published without consent of the writer, or authority of law,' as per *California Civil Code*, 1872, Div. 2, Pt. III, Title 2, Ch 3,

that the petition shows 'the pleader is entitled to relief, 8, (2), F.R.C.P., the present petition being *Amended Complaint II*, 'events since' the original filing are stated, and in the prayer of the petitioner the 'relief to which he deems himself entitled

. . . 'relief in the alternative or of different types' in accord with 8 (3), F.R.C.P., is specified, and plaintiff and counsel anticipate, therefore that the pleading, lawfully based and with the surest satisfaction of all rules and requirements shall be 'construed so as to do substantial justice' 8 (f), F.R.C.P., cognizant of 42, F.R.C.P.: 'In actions involving a common question of law or fact, the Court . . . order a joint hearing or trial of . . . all matters in issue in the actions; order all actions consolidated, and it may make such orders concerning the proceedings as may tend to avoid unnecessary cost or delay.' "

The Plaintiff-Appellant hereby, in the pleading, presents "a *prima facie* case sufficient to overcome any opposing motions," Alfred W. Gans, 7, Belli Seminar, "Trial and Tort Trends," 1956.

The lower Court appealed-from, regardless, and regardless of that "Court should not be allowed to give a verdict contrary to reason and justice," *Arnstein v. Porter*, 154 F. 2d 464, accorded an Order to defendants [Addendum 367] by which this action

"is dismissed with prejudice on each and all of the following grounds:

1. . . . 'fails to state a claim' . . .
2. . . . 'is barred by adjudication in . . . prior action' . . .
3. . . . 'attempt to obtain reconsideration of the complaint in said prior action' . . .
4. . . . 'does not contain a short and plain statement of the claim'

5. . . . 'does not comply with the Minute Order of April 18, 1961' ”

[see “Order of Severance” prepared by plaintiff, Tr. p. 406].

“6. ‘Amended Complaint II sets forth in a single count several separate transactions or occurrences, and a clear representation of the matters set forth therein requires that each separate transaction or occurrence be set forth in a separate count. Therefore, Amended Complaint II fails to comply with Rule 10(b) of the Federal Rules of Civil Procedure.’

7. ‘There is a misjoinder of parties defendant.’

8. ‘Amended Complaint II is unintelligible.’

9. . . . ‘fails to comply . . . in that copy of the works . . . is not attached’. . . .

10. . . . ‘Plaintiff has therefore had ample opportunity to cure the defects stated in Paragraphs 1,—4,—6, 7, 8, and 9 hereinabove and has failed to do so.’

. . . ‘dismissed upon each and all of the above stated grounds without leave to amend and with prejudice.’

. . . ‘dismissed without leave to amend and with prejudice as against all defendants named in the complaint, amended complaint, and Amended Complaint II herein.’ ”

VI.

Specification of Errors.

1. The complaint does state a claim and present facts sufficient to support cause of action.

2. The cause is not barred or adjudicated.

3. It is not "reconsideration" where a cause has not been heard and in each instance the cause is enlarged and *res nova*, "a new matter, a new case; a question not before decided."

4. The complaint does contain a short and plain statement of the claim.

5. The complaint and the "Order of Severance" [Tr. p. 406] fully comply with the Minute Order of April 18, 1961.

6. The complaint does not set forth several separate transactions in a single count but each single transaction in a separate count and therefore fully complies with Rule 10, F. R. C. P.

7. There is no misjoinder of parties defendant. If there were misjoinder the Court is in error having withdrawn the right to amend the complaint.

8. The Amended Complaint II is fully intelligible, and states facts sufficient to support cause of action.

9. Copies of the works and the infringing works are attached.

10. There are no defects in the complaint.

11. The Order states "Rules of Procedure under the Copyright Act, 17, U. S. C., 101." [Tr. p. 370.] The Rules of Practice and Procedure in Copyright Actions arise under 2072 of Title 28, U. S. C. (62 Stat. 869) [Tr. p. 387.]

VII.

Summary of Argument.

1. The claim is definitive; “infringement” states claim in Copyright Law and the event of such claim is mandatory.

2. The assertion of “adjudication” is faithless and untrue, conquered by the circumstances, repudiated by all authorities and precedents.

3. The cause requires first consideration and has not been heard, the demurrers of the defendants avoiding to meet the merits.

4. No shorter or plainer statement of claim than the one word “infringement” is possible in all law or language.

5. The “Order of Severance” drawn as directed shows the statement “does not comply” to be untrue.

6. The theory of “separations” herein is an “untenable theory” and inflates Rule 10, F. R. C. P. The complaint equates therewith.

7. It is error to revise misjoinder as a cause for dismissal and the defendants herein are properly joined.

8. All copyright authorities and decisions affirm this complaint.

9. The filing and fullness of expansive “EXHIBITS” show assertions that they are absent to be faithless and untrue and per No. 11 SPECIFICATION OF ERRORS above, the Order is additionally in error with respect to the Rules of Procedure in Copyright Actions.

10. There are no defects in the complaint, the faulting of such complaint is not in good faith.

VIII.

Argument.

1. The Claim Is Definitive: "Infringement" States Claim in Copyright Law and the Event Is Mandatory.

1. . . . "fails to state a claim" . . . But, "Claim: generally, is the assertion of a right" (Law Dictionary, Byrne, 1923, 186), and "Claim—a challenge of the ownership of a thing which is wrongfully withheld from the possession of the claimant,") see *Cummings v. Lynn, v. Dall.* (U. S.) 441 L.Ed. 215; *Willing v. Peters*, 12 S. & R. (Pa.) 177 and "claim (klam) 1. A demand of a right . . . a calling on another for something due . . . 2. A right to claim something, a title to any debt, privilege, or other thing in possession of another; also, a title to anything which another should give or concede to, or confer on, the claimant." (Webster's New International Dictionary, Unabridged, 1942). "Claim: defined as the assertion of a liability to the party making it to do some service or pay a sum of money," (*Bouvier*, "Dictionary of Law") and the Plaintiff-Appellant herein challenges the ownership and demands the payment to him of "all of the profits made by the infringers" under Section 101 of the Copyright Act, noting that the profits demanded are those published by the defendants while supposed secure in the admitted spoliations from Plaintiff-Appellant. Also, the single statement of the one word "infringement" states the claim in Copyright Law, the result being as a matter of law, Title 17, U. S. C., 101, that "all of the profits made by the infringers" must be paid over to the claimant.

2. The Assertion of “Adjudication” Is Faithless and Untrue, Contradicted by the Circumstances, Opposed by the Orders of the Several Courts and Repudiated by All Authorities and Precedents.

2. . . . “is barred by adjudication in . . . prior action” . . . But, “it is entirely improper to give any weight to other actions,” yet, “language of his rulings (the judge) indicates he was affected by them, and defending attorney’s interpretation of them” and in the words of the 2nd Circuit Court of Appeals herein “if so, he erred,” and “in so seeking to prejudge the merits he erred,” *Arnstein v. Porter*, 154 F. 2d 464.

In addition, the statement is untrue. The Orders in the actions of the Plaintiff-Appellant consistently expanding into the present action are provided in full for the perusal of the present Court of Appeals [Addendum to the Tr. of Rec.], the latter of them stating that it is not an adjudication but “without prejudice to the bringing of any further action pertaining to the subject matter sought to be litigated.”

The Orders [Addendum, Tr. of Rec.] have no elements of *res judicata*, eventuated while the plaintiff, at economic necessity, appeared in *propria persona*, and are respectively *ex parte*, the first obtained by no Notice to plaintiff and characterized by question of a statement of the domiciliary and domesticated status of defendants within the jurisdiction of the Court, and the second obtaining *ex parte* at the incapacity of the plaintiff.

Plaintiff-Appellant and counsel note that in the Order here on appeal [Addendum p. 369, line 17], the statement is altered away from *res judicata*, which was under

discussion, and the word “adjudication” is employed instead. Adjudication does not imply a final judgment, and therefore cannot controvert the present action, nor, again, if *res judicata* is argued, do either of the Orders [Addendum] hold any elements of *res judicata* for the elements here are firmly and universally “held not to bar a subsequent suit:”

“a suit dismissed for want of prosecution and not heard on the merits;

Decision of a motion is not in the light of *res judicata*;

Demurrer not going to the merits is not *res judicata*; etc.”

Bouvier, “Dictionary of Law.”

and

“Judgment dismissing suit . . . may not preclude plaintiff from bringing new suit.” *Dowling v. Polack* (1861), 18 Cal. 625, a century old precedent.

“Judgment of dismissal for want of prosecution is not *res judicata*,” *McManus v. Bendlage* (1947), 82 Cal. App. 2d 916, 187 P. 2d 854;

“a judgment of dismissal entered upon plaintiff’s failure to appear is not a bar,” 42 Pac. (Nev.) 11.

In the instances, the first, the plaintiff was not notified of the hearing, and in the second instance was hospitalized, unknowing of hearing and the action was in *pro per*.

The cause consistently expands, as, present additional acts of the defendants will make the whole new again when remanded and adjudication, therefore, is an ar-

gument, not an actuality, and to be *res judicata* four things are necessary:

“Identity in the thing sued for ;

Identify of the cause of action ;

Identity of persons and of parties to the action ;

Identity of the quality in the persons for or against whom the claim is made.” *Bouvier*, “Dictionary of Law.”

The Orders indicated are on no more than Motions and on demurrers, as herein, which do not meet the merits, therefore no elements of *res judicata* can obtain and nothing obstructs the plaintiff from proceeding, determination of the cause obtaining only when the final word of the highest Court has been spoken (noting, aside, the personality possibilities and perseverance of the Plaintiff-Appellant herein). And each and every applying to the cause or causes being not final judgments but appealable orders.

3. The Demurrers of Defendants Admitting Duplicity Only Confute Consideration; the Cause Has Not Been Heard and Nothing Is Therefore Proffered for Reconsideration but All Presented for Ruleful and Lawful First Consideration and Trial.

3. . . . “attempt to obtain reconsideration of the complaint in said prior action.” . . . But, since there is no adjudication of any action it is not in point whether consideration or reconsideration is asked, and factually, the plaintiff continues to attempt to obtain only consideration of the trial which he demands, and of which he cannot be deprived, yet the defendants actions and arguments and Order here obtained, if admitting the

charges against them, approach inciting a question of Constitutional Law for they are interfering with and impairing Plaintiff-Appellant's inalienable right to trial, Section 7, Article I, Bill of Rights, Constitution of the United States.

4. "Infringement" States Succinct and Certain, Clear and Specific Claim.

4. . . . "does not contain a short and plain statement of the claim" . . . But, since, in copyright, "claim" is actually stated in one word "infringement," "copying," or "appropriation," no shorter or plainer statement of the claim is possible in all law, and, as above, this Brief has fixed the nature of claim.

5. The "Order of Severance" Drawn as Directed Shows the Statement of Non-Compliance to Be Untrue.

5. . . . "does not comply with the Minute Order of April 18, 1961" . . . But, this statement is untrue. The Plaintiff-Appellant did fully comply as [see "Order of Severance" Tr. of Rec. p. 406] directed by the Court and the "Order of Severance" was drawn and offered, with the Court refusing to read the "Order of Severance" the Court directed to be drawn, and with the Court having quoted as authority for such "severance" a case not in point and the opposite of the within action (*Fielder v. Farrell Lines*, 89 F. R. S. at 390 involving many plaintiffs and not the same transaction as opposed, herein, to one plaintiff and all the same transaction). Nevertheless, the Plaintiff-Appellant complied as apparent in the "Order of Severance"

submitted, though submitting to the consideration of the Court that such “severance” is unknown and would possibly dismember and disperse the cause herein, possibly defeating it by the ageless “divide and conquer,” that such “severance” appears to absent the applicable Rules 21 and 42 of the Federal Rules of Civil Procedure and is impracticable as resulting in as many as 16 Trials of 2-3rds of the defendants rather than the obvious and lawful 1 Trial of all. [Tr. of Rec. pp. 271-276; Tr. of Proc. pp. 5-6.]

6. The Defendants Pursue an “Untenable Theory” to Avoid Answering and Accounting, Asking the Court to “Obliterate the Gravamen of the Case” Rejected in *Tooke v. Allen*, 85 Cal. App. 2d 230, at Tr. p. 275, 276, and Higher Courts Should Not Sustain Small Arguments for Unjust Purposes That Lower Courts Have Already Rejected.

6. . . . “separate transaction or occurrence be set forth in a separate count” . . . But, two forms of Complaint (66 pages and 53 pages) were filed and the Court asked there be replacement thereof with the Amended Complaint II and the Amended Complaint II does state each incident individually and in consonance with Rule 10, F. R. C. P. demonstrated, as well as the demurrers are here pursuing an “untenable theory” to proscribe the pleading and despite that the Supreme Court orders this pleading, Form 17, F. R. C. P., and the “untenable theory” is defined where the trial judge rejected such theory, *Tooke v. Allen*, 85 Cal. App. 2d 230, shown at Transcript of Record, pages 275, 276.

7. It Is Error to Revive the Abolished Misjoinder as a Contention for Dismissal and the Defendants Herein Are Properly Joined.

7. "There is a misjoinder of parties defendant." But, it is a commonplace that misjoinder is not a cause for dismissal of a cause, and the Court faults its own Order by reviving misjoinder as such. The defendants herein are properly joined as the pleading presents, each exchanging and commonly concerted and combined in the conspiracy charged.

8. All Copyright Authorities and Copyright Decisions Confirm the Complaint as Stating Facts Sufficient to Support the Cause of Action.

8. "Amended Complaint II is unintelligible." But, all copyright authorities and all causes in copyright support it and this "unintelligible" Form is annexed to the Federal Rules of Civil Procedure. Moreover, if the intelligibility of an item were arguable, it is superseded by the fact that the works themselves are before the Court, *Shipman v. R.K.O. Radio Pictures, Inc.*, 35 U. S. P. Q. 242 (1937).

9. The Filing and Fullness of Expansive "Exhibits" Show Assertion That They Are "Not Attached" to Be Faithless and Untrue. The Order Is in Error in the Statement "Rules of Practice, 17, U.S.C. 101," Said Rules Instead Arising Under Title 28, U.S.C., 2072.

9. . . . "fails to comply . . . in that copy of the works . . . is not attached" . . . This statement is untrue and the paragraph of the Order [Tr. of Rec. p. 370 and Addendum] contains an error of law as shown in "Statement of Objections of Plaintiff to the

Draft: 'Order Granting Motion to Dismiss' and 'Judgment of Dismissal' " [Tr. of Rec. p. 373] at page 387 Transcript of Record. The contention is answered by the expansive "EXHIBITS" filed with the Court and shown pages 58 to 72 and 79 to 102 of the Transcript of Record and otherwise by the Copyright Decisions which have inconvenienced procedure in such causes.

**10. The Faulting of the Complaint Is Not in Good Faith;
There Are No Defects in Such Complaint.**

10. . . . "cure the defects" . . . But, the Complaint is indisputable and universally upheld, not defective, and the Plaintiff-Appellant calls upon the Court of Appeals for the Ninth Circuit to so define in assistance of all copyright actions.

. . . "dismissed . . . without leave to amend and with prejudice" . . . But, if contest concerning the Complaint were credible, to amend any Complaint, even unlimitedly, is universal and perfunctory justice to the degree that it does not need to be discussed.

And, "with prejudice" to this plaintiff is prejudice itself. It inheres in the multiple manifests of action and the length of the litigation that there has never been an item of untoward or undignified action from the Plaintiff-Appellant. Rather, the Plaintiff-Appellant desires the cause to contribute to the law and is shown to have set himself to have the case fix the principle that good will serves all and is the wish of the Courts.

In general, general demurrer not going to the merits must be overruled, and at no page of the hundreds of pages in the Transcript of Record herein or the files of the preceding actions will the Court of Appeals

find anything other than general demurrers admitting the whole charges, each time, to be true, and avoiding to meet the merits but obtaining suspense of decision or action, and *Weitzenkorn v. Lesser*, quoted 97 U. S. P. Q. 556 states “the common count . . . is not subject to attack by general demurrer or by a special demurrer for uncertainty or on grounds of ambiguity or unintelligibility;” “this form of pleading . . . by long continued practice is not subject to attack,” “well pleaded facts must be taken as true for the purposes of demurrer,” and:

“A count of a complaint which alleges that plaintiff wrote and was exclusive owner of a literary composition, . . . had submitted it to defendants . . . states a cause of action and a judgment of dismissal following an order sustaining a demurrer will be reversed with directions to permit defendant to answer.”

“A count of a complaint which alleges that plaintiff furnished to defendants . . . and that defendants retained and used to . . . damages . . . states a cause of action and a judgment of dismissal following an order sustaining a demurrer will be reversed with directions to permit defendant to answer.”

Identically, “a count of a complaint which alleges that plaintiff” as within “submitted to defendants . . . that defendants accepted . . . became fully familiar with it . . . and thereafter produced and broadcast . . . substantially copied, used and embodied . . . states a cause of action, and a judgment for defendants entered on an order sustaining demurrers without leave

to amend will be reversed with directions to permit defendants to answer,” *Kurlan v. Columbia Broadcasting System, Inc.* (1953), 40 Cal. 2d 799, 256 P. 2d 962, and:

“A count of a complaint which alleges that plaintiff submitted program idea and sample . . . recording . . . for the purpose of sale or use by them on payment to him of its reasonable value . . . and they . . . substantially copied and used . . . states a cause of action on an implied contract, and a judgment for defendants entered on an order sustaining their demurrers without leave to amend will be reversed with directions to permit defendants to answer,” and 3 times further this cause states the same against such demurrers as appear in the within “will be reversed with directions to permit defendants to answer.”

Counsel is caused to submit in the case of *Edward Dunbar O'Brien v. Frank Sinatra, et al.*, herein, that the Court has acted with accumulated abuse of discretion, reversible, remandable and reprimandable. The Court has acted with bias and prejudice, “a forejudgment, a leaning toward one side of a cause for some reason other than its justice.” *Willis v. State*, 12 Ga. 448.

The Court appears to have accepted the defendants pretensions to privilege and power against all law and to have denied all reason and justice to this plaintiff. The Court addressed the statement to the defending attorneys: “The only way you’re ever going to get rid of it is to get an order that will be binding” and it is submitted that with bias and prejudice contributes to compounding such an order though false, pre-judged

the case and predetermined to displace it, and in addition to the Order of Dismissal appealed.

—refused to read the order of severance the Court directed to be drawn,

—refused to allow the plaintiff to speak to illuminate the copyrights about which the Court had just inquired,

—refused to help to obtain the return of the Plaintiff-Appellant's manuscripts held in the Adverse Possession of defendants,

—demonstrated disregard of the expansive and superseding "EXHIBITS" and acted without informing himself that boxes thereof were on file,

—circumscribed the issue of restraining orders upon defendants until the whole cause could be voided by the willful, illegal Order of Dismissal appealed,

—exorcised the entry of defaults of defendants in default respectively 120 days and 90 days, and evaded evaluation of the fact that all defendants appearing in addition, were in default to the Amended Complaint II for a period of 31 days on the date nevertheless of issuing such Order of Dismissal.

IX.

Conclusion.

The Order dismissing Plaintiff-Appellant's cause of action without leave to amend should be reversed and remanded with instructions to the defendants to answer and to proceed according to the rules (F.R.C.P.), and to enter the specific defaults, or in the alternative,

The Court of Appeals may declare the default of all defendants [Tr. of Rec. p. 375], and direct that an accounting of the monies due to the Plaintiff-Appellant be heard.

Respectfully submitted,

WILLEDD ANDREWS,
Attorney for Edward Dunbar O'Brien,
Plaintiff-Appellant.

Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

WILLEDD ANDREWS